insisted on submitting the plan themselves. The respondents deny this. Consideration will also have to be given as to the effect on the contract if it is established that the appellants failed in their duty and whether they are entitled to full fees.

To go further, the respondents in their affidavit say that the appellants' charges should be in accordance with the Institute's scales. The appellants merely disagreed that the fees are payable as set out in the Institute's scales and say that the fees should be according to the letter of September 12, 1974. The Institute's scales for a project not proceeded with to full service are $100 (as against the appellants' $50) per lot for the first 10 lots, and $50 (as against the appellants' $100) per additional lot. It will be seen that on the Institute's scales the appellants would only be entitled to $33,500 as against $65,500 as claimed. The apparent question of law to be considered is whether the appellants, who do not appear to deny that they are governed by the Institute's scales, are entitled by contract to levy their own scales and ignore the Institute's scales and, if not, whether the contract of engagement can be said to be infected with illegality, having regard to section 4(d) of the Architects Act, 1967 (Act 117) which provides that the functions of the Board of Architects are to fix from time to time with the approval of the Minister the scale of fees to be charged by Architects for professional advice or service rendered. The position in England is different. In *Gilbert & Partners* v. *Knight*[1] the Court of Appeal there held that where an express agreement has been made as to the amount of remuneration to be paid to an architect or engineer, he must be paid accordingly. There seems to be no provision there equivalent to our section 4(d) of the Architects Act, 1967.

If all the main points had been properly adverted to in the pleadings, the finding of the court would have been that there are indeed *bona fide* triable issues which do justify the order of conditional leave to defend. See *Shanghai Hall Ltd.* v. *Town House Hotel Ltd.*[2] where *Jacob* v. *Booth's Distillery Co.*[3] and *Fieldrank Ltd.* v. *Stein*[4] were discussed.

The appeal is dismissed. Costs to the respondents. Deposit to respondents to be accounted against costs.

Appeal dismissed.

Solicitors: *P.G. Lim & Co.; Lek Yan & Co.*

LIM KIAT BOON & ORS. v. LIM SEU KONG & ANOR.

[O.C.J. (Mohamed Azmi J.) March 19, 1979]
[Kuala Lumpur — Civil Suit No. 480 of 1975]

Damages, — Quantum — Leg injuries — ½" shortening — plaintiff awarded $7,500 for pain and suffering and loss of amenities and $6,000 for loss of earnings.

Employment — Damages — Payment advanced by employer to plaintiff — Whether payment could be refunded out of damages received from defendants.

The present case involved the claim of the first plaintiff only as the claims of the second and third plaintiffs had been settled. The plaintiff in this case claimed for personal injuries and loss suffered as a result of a road accident caused by the negligence of the first defendant, the driver of the car in which the plaintiff was travelling. The plaintiff suffered the following injuries: (a) left thigh deformed and bruised just above the knee (b) two lacerations 1 cm. each over shin of left leg (c) right leg 1 cm. laceration anterior border (d) a fracture of the function of lower 1/3rd and mid 1/3rd of left femur. The left leg was shortened by ½". The plaintiff walked with a slight limp and had difficulty in climbing stairs.

The plaintiff, aged 51 years, was the chief broker in the HCB company. He earned a comparatively small salary of $650 per month and a bigger brokerage commission, which varied according to his own contribution towards business turnover and rubber market condition. He was employed by H.C.B. under a contract for service. During the six-months period of incapacity, HCB Company settled the first plaintiff's hospital bills and paid his salary and brokerage commissions for six months.

Held: (1) the proposition that there should be no reduction where the money is given gratuitously or advanced by a sympathetic employer is based on the principle that the generosity of others is *res inter alios acta* and not something from which the wrongdoer should reap the benefit; where, however, the injured plaintiff receives the money as of right from the employer, either under statutory or contractual obligations, the money received is deductible;

(2) the plaintiff should be awarded $13,500 as general damages: $7,500 for pain and suffering and loss of amenities and $6,000 for loss of earnings on brokerage; $24,742.32 as special damages on condition that out of $24,742.32, the sum of $24,331.82 should be paid to HCB Company.

Cases referred to:-

(1) *Inland Revenue Commissioners* v. *Hambrook* [1956] 2 Q.B. 641, 656-7, C.A.

(2) *Parry* v. *Cleaver* [1970] A.C. 1.

(3) *Browning* v. *The War Office & Anor.* [1963] 1 Q.B. 750, C.A.

(4) *Monmouthshire County Council* v. *Smith* [1956] 1 W.L.R. 1132, 1138.

(5) *Receiver for the Metropolitan Police District* v. *Croydon Corporation* [1957] 2 Q.B. 154, 163, C.A.

(6) *Dennis* v. *London Passenger Transport Board* [1948] 1 All E.R. 779.

(7) *Bonham Carter* v. *Hyde Park Hotel, Ltd.* [1948] 64 T.L.R. 177, 178.

(8) *Sum Kum* v. *Devaki Nair & Anor.* [1964] M.L.J. 74, F.C.

CIVIL SUIT.

David Tay for the plaintiffs.

K.C. Loke for the defendants.

Cur. Adv. Vult.

Mohamed Azmi J.: This is a claim for personal injuries and loss suffered by the three plaintiffs whilst they were travelling as passengers in motorcar No. BAB 3160 driven by the first defendant as servant or

agent of the second defendant on July 11, 1972 along the Kuala Lumpur/Tanjong Karang Road. At the 6th milestone, the car ran off the road and, as a result, the plaintiffs suffered injuries. The first and second plaintiffs claim special and general damages, whilst the third plaintiff claims general damages only.

At the commencement of the hearing, the defendants admit negligence and concede 100% liability. The claims of the second and third plaintiffs, who suffered minor injuries, have been settled. The only issue for determination is the quantum of general and special damages for the first plaintiff.

Under special damages, the first plaintiff, who is a director and chief broker in a rubber company, claims the following eight items: —

(i) Transport expenses for his wife and children to visit him at the General Hospital, Kuala Lumpur for 324 trips @ $1.50 per trip by taxi	$486.00
(ii) Transport expenses on discharge by taxi	1.00
(iii) Transport expenses for him to keep out-patient appointment for 11 trips @ $1.50 per trip by taxi	16.50
(iv) Medical expenses	1,748.75
(v) Damage to clothing (an over-coat)	185.00
(vi) Purchase of a pair of crutches	10.00
(vii) Damage to a pair of glasses	40.00
(viii) Loss of earnings due to injuries from July 11, 1972 and continuing.	

Items (ii), (iii), (vi) and (vii) have been agreed, the total of which comes to $67.50. In the course of the hearing, item (i) is also agreed at $243. The remaining items (iv), (v) and (viii) are in dispute.

As regards damage to clothing, the first plaintiff testifies that he bought the damaged suit at $185 about a year prior to the accident. Plaintiffs' counsel concedes about 25% should be deducted and a sum of $140 should be awarded. But defence counsel submits at the most only $100 can be allowed. In my view, $100 is fair as it is not clear from the evidence and the statement of claim whether a lounge suit or an over-coat was damaged.

The difficulty in this case is the claim on medical expenses and actual loss of earnings under items (iv) and (viii) of special damages. The medical expenses of $1,748.75 under item (iv) was settled by Holiday, Cutler, Bath & Co. Sdn. Bhd. (hereinafter referred to as "The HCB Company") who is the employer of first plaintiff. So is his salary for period from July to December 1972 at $650 per month which totals $3,900 and commissions totalling $18,683.07 for the same period of six months. (See Exhibit P2). These payments were made by the HCB Company to him when he was unfit for work, and by the letter Exhibit P2, his solicitors were informed by the HCB Company of the fact that the first plaintiff has been instructed to claim from the defendants the sums which the HCB Company has paid in respect of hospital expenses, the six months salary and commissions totalling $24,331.82. Under item (viii), apart from six months salary and commissions which the first plaintiff claims on behalf of the HCB Company, he also claims for actual loss of earnings in commissions which he could have earned during the six-month period of incapacity. As the actual amount cannot be ascertained, in my view, this part of the claim under that item should be considered under general damages for loss of commission earnings. Now, going back to the hospital bills (Exhibit P1), it is not disputed by the defence that the sum of $1,748.75 was paid by the HCB Company. So is the sum of $3,900 as salary and $18,683.07 as commissions. The payments and as well as the amount of these three payments are not in dispute. The only question is whether they are payable by the defendants. If they are payable, the next question is whether they are payable to the first plaintiff or to the HCB Company through him. It is the contention of defence counsel that they are not payable on three main grounds. Firstly, it is submitted that to be payable there must be understanding or agreement at time of payment between the HCB Company and the first plaintiff that the sums paid should be refunded. Secondly, since the sums are incurred by the HCB Company as employer, these sums must be deducted from the first plaintiff's claim; and, finally, it is for the employer to claim from the defendants and not for the first plaintiff to do so.

All these three grounds are inter-related and can be dealt with together. It is submitted by defence counsel that, if at the time of payments of the salary, commissions and medical bills, there was an understanding between the first plaintiff and the HCB Company that if he successfully recovered all these sums from the defendants he is to refund the said sums or, alternatively, he was at the time of payments instructed to claim the said sums for the HCB Company, only then the defendants are liable. In the present case, it is submitted there was no such understanding or instruction at time of payments. The letter Exhibit P3 purporting to give instruction to the first plaintiff to claim the items, is dated April 19, 1977. The instruction was made subsequent to payments and not at time of payments. My first observation is that there is no authority cited for the proposition that the agreement or instruction must be made at time of payments. *Mayne & McGregor* on Damages provides valuable authorities on this matter. Article 762 of the Twelfth Edition states:

> "If relatives give the required attendance to an incapacitated plaintiff and so save him the expense of a paid nurse or the like, there is no reason why the wrongdoer should benefit from the gratuitous extra labour taken on by the relatives.... Expenses paid by a relative should be on the same footing as attendance given by a relative to obviate the necessity of incurring the expenses.... Expenses paid by employers should be recoverable from the tortfeasor, who should not benefit from the generosity or the contractual obligation of this third party: the plaintiff will remain under a moral obligation to reimburse the employer. This appears to be the position in the case of lost earnings."

Article 773 of the Twelfth Edition also states:

> "An employer, a near relative, a charity may assist the plaintiff in his difficulties caused by the injury by continuing to pay his wage or salary in the case of an employer or by paying him its equivalent in the case of a relative or charity. Sometimes the payment is made upon the understanding that the plaintiff will reimburse the payer if the

plaintiff is successful in his action in respect of the injury. *The general rule appears to be that no deduction is to be made from the damages, although where it is clear that there was an understanding to repay, the court has awarded the full damages, on the terms that the plaintiff pays over the appropriate amount to his benefactor....* Yet if there had been no expectation of repayment on the part of the benefactors so as not to allow such a court direction, it would seem that principle demands that there should still be no reduction in the damages: recompense to employers should depend on the conscience of the plaintiff."

(The emphasis is mine).

Thus, in *Inland Revenue Commissioners* v. *Hambrook*,[1] Lord Goddard C.J. at page 656 said:

"Those of us who have to try these personal injury cases know quite well how often it happens that a considerate employer, relative, or some kindly disposed friend gives an injured man a sum equivalent to his wages during incapacity on the terms that if he recovers his loss of wages as part of his special damage in an action he should repay what is advanced to him. Sometimes, too, I have known a loan to enable an injured man to go away for convalescence or to receive some special treatment which he could not afford from his own resources. I have never known these items when claimed as special damage to be disallowed, provided they were reasonable, because the injured man had to seek assistance such as I have described to enable him to obtain the benefits and which he would have to repay."

The same commentary can be found in the Thirteenth Edition of *McGregor* on Damages under Article 1122:

"The courts appear never to have taken into account, in the assessment of damages for loss of earning capacity, moneys gratuitously conferred from private sources upon the plaintiff as a mark of sympathy and assistance, and this approach is fully supported in *Parry* v. *Cleaver*[2] by majority and minority alike.... Similarly, payments made by a sympathetic employer ought not to be taken into account, but, there may be some little doubt here by reason of the now established rule that wages, salary and sick pay which the plaintiff receives *as of right* do enter into the assessment of the damages for loss of earning capacity."

(The emphasis is mine).

It seems to me that the proposition that there should be no reduction where the money is given gratuitously or advanced by a sympathetic employer is based on the principle that the generosity of others is *res inter alios acta* and not something from which the wrongdoer should reap the benefit. But where the injured plaintiff receives the money as of right from the employer either under statutory or contractual obligations, the money received is deductible. Thus, in *Browning* v. *The War Office & Anor.*,[3] Lord Denning M.R. took it as established that, where a plaintiff is paid his wages as of right by his employer during incapacity, he cannot claim the self-same wages again from the wrongdoer but must give credit for the wages he has received and is entitled to receive. This principle was treated as obvious by Lord Goddard C.J. when the case of *Monmouthshire County Council* v. *Smith*[4] together with *Receiver for the Metropolitan Police District* v. *Croydon Corporation*[5] was heard on appeal. Defence counsel's reference to *Kemp & Kemp* Volume 1, Fourth Edition, page 127, to the proposition that a plaintiff has suffered no loss and can recover no damages if he has received wages from his employer during the period of incapacity, where his employer is obliged by statutory regulations to pay him his wages whether he is fit for duty or not, is consistent with what I have said earlier. This proposition is in fact based on *Receiver for the Metropolitan Police District* v. *Croydon Corporation* (*ante*).

In the present case, the first plaintiff is a professional chief broker for 22 years in a specialized rubber trade, and he is employed by the HCB Company under a contract for service and not of service. His income is derived from two sources. A comparatively small salary of $650 per month and a bigger brokerage commission, which varies according to his own contribution towards business turnover and rubber market condition. From the evidence of the first plaintiff and PW2, I am satisfied that when the HCB Company settled the first plaintiff's hospital bills and paid his salary and brokerage commissions for six months, it was done by the company as a sympathetic employer with expectation that the money should be refunded should he succeed in his legal claim against the defendants. I accept his evidence that his employer paid the money first and he was asked to claim it on the company's behalf from the court. This is corroborated by the evidence of Mr. Wolters (PW2) who testifies in cross-examination that ordinarily the HCB Company would not expect a refund, but since the first plaintiff went to hospital as a result of third party's fault, the company expects a refund. But in respect of the salary and commissions, he did not expect a refund at the time of payment; but on the date of hearing, he instructed the first plaintiff to recover the amount from the defendants as contained in the letter Exhibit P2. As stated by *Mayne & McGregor* at page 163, even if there had been no expectation of repayment on the part of the benefactor, principle demands that there should still be no reduction in the damages. The present case is thus stronger because, even if at the time of payments, no understanding for repayment to the HCB Company was made by the first plaintiff, it cannot be disputed that the company has in fact instructed the first plaintiff to recover as evidenced by Exhibit P2.

Further, these three payments were not received by the first plaintiff as of right under contractual or statutory obligation. During the six-month period of incapacity, the first plaintiff was prevented from doing his work. He was completely immobilized for more than 2½ months in hospital; and after being discharged, he had to use two crutches for almost two months because of the fractured left thigh. The HCB Company was under no legal or contractual obligation to make the payments. There is no evidence to suggest that under the contract for service, the first plaintiff was entitled as of right to hospital benefits, salary and brokerage commissions during the period of incapacity. As such, the case of *Browning* v. *The War Office & Anor.* (*ante*) does not apply, and the first plaintiff is entitled to claim for special damages for the hospital bills, six months salary and commissions without reduction. The first plaintiff did not earn the payments advanced or gratuitously given by his sympathetic employer. It is not in dispute that these three payments have been made to the first plaintiff by the employer when he was incapacitated as a result of the defendants' negligence in the road accident. Nor is it ever suggested by the defendants that the amount of money paid is excessive or unreasonable. In the event, it is my finding that the amounts claimed in Exhibit P2 are payable by the defendants; and following the decision in *Dennis* v. *London Passenger Transport Board*,[6] although there should be no deduction of the sum of

$24,331.82 from the first plaintiff's claim, this sum should be awarded to him on condition that he should pay it over to the HCB Company.

On special damages, I would therefore allow under —

items (i), (ii), (iii), (vi) and (vii)	—	$310.50 (as agreed)
item (v)	—	100.00
item (iv)	—	1,748.75
item (viii)	—	22,583.07
Total:		$24,742.32

Out of this total, I order that items (i), (ii), (iii), (v), (vi) and (vii) totalling $410.50 to be paid to the first plaintiff, and the balance sum of $24,331.82 accruing from items (iv) and (viii) to be paid to the first plaintiff conditional upon him repaying that sum to the HCB Company.

With regard to general damages, for pain and suffering and loss of amenities, I take into consideration the following facts. The first plaintiff was hospitalised for approximately 2 months 21 days from July 12, 1972 to October 3, 1972. He was then treated as out-patient for 1½ months. He sustained the following injuries: —

(1) Left thigh deformed and bruised just above the knee.

(2) Two lacerations 1 cm. each over shin of left leg.

(3) Right leg 1 cm. laceration anterior border.

(4) A fracture of the junction of lower ⅓rd and mid ⅓rd of left femur.

On January 8, 1973, the fracture had united and movements of left knee were 25° limited. At the moment, his general condition is satisfactory and there is a very slight limp when he walks. There are scars of healed wounds at the laceration areas and over the two healed fracture wounds over the upper part of left leg. The scars sustained are permanent and will constitute some cosmetic blemish on his appearance. The comminuted fracture of the left femur has united with a 20° anterior tilting of the lower fragment. This is also permanent and is the direct cause of the 20° limitation of flexion of movement of the knee. This impairment of movement is permanent and will hamper his ability to squat. The left leg is also permanently shortened by half an inch. However, the shortening is unlikely to leave him with functional disability. The 1½ inches wasting of the left thigh muscles is due to disuse atrophy and is expected to improve in time with active usage of the leg and exercise. His very slight limp and difficulty in climbing stairs is mainly caused by the wasting of the thigh muscles and these functional disabilities could be expected to show gradual improvement in time. He was about 51 years old at time of accident. From date of accident (July 11, 1972) to date of resuming work (January 15, 1973), he was on medical leave — a period of approximately six months. During hospitalisation, he was immobilised. After discharge from hospital, he had to use two crutches for almost two months. As regards loss of amenities, he used to play table tennis and indulged in Tai Chi exercise. Now he cannot do both very often. He also used to dance frequently in order to entertain clients. As a result of the injuries, he has to curb this social activity. Having regard to all the circumstances, I assess pain and suffering and loss of amenities at $7,500 based on authorities cited by defence counsel.

On loss of earnings on brokerage commissions, there is evidence that the first plaintiff received less during the six months medical leave. Although the HCB Company paid him certain commissions during this period totalling $18,683.07, it was less than his usual and expected share of commissions. There were two reasons for this. During the period of incapacity, he lost his personal customers and, secondly, the HCB Company became under-staff. Without him, who is the chief broker and the most experienced, there were only three other brokers, all of whom are his subordinates. They could not cope with the volume of work coming in. His evidence is corroborated by Mr. Hendrick Ottevanter (PW3) of Bee Seng Co. Sdn. Bhd. Although PW3 is a regular client of the HCB Company, I consider him as an independent and truthful witness. PW3 is a rubber merchant and he confirms that when the HCB Company is short-handed, clients are forced to go to other brokers.

Since there is great fluctuation in the rubber market, it is difficult to assess the loss in commissions during the period of six months when the first plaintiff could not work. I accept the evidence that the first plaintiff is the chief broker with the most business contact and experience compared with the other three brokers in the HCB Company. To engage another broker in his place would not be possible because it is difficult to get another with more than twenty years experience like the first plaintiff. I accept PW3's evidence that rubber brokers, work as a team. If the team is short-handed, it cannot give the usual service to customers. During September 1972 to mid-January 1973, market condition was extremely good for rubber, and with the absence of the first plaintiff in the team during that period, I am satisfied that his share of commissions would have been much more than what was paid to him by the HCB Company for the months of July to December 1972 as contained in Exhibit P3. The HCB Company has many clients, but taking just one client as an example, it is reasonable to conclude the HCB Company suffered a loss during the first plaintiff's absence, and in consequence the first plaintiff's share of commissions was also affected. Thus, in the case of Bee Seng Co. Sdn. Bhd., PW3 testifies that after the first plaintiff's road accident, Bee Seng Company's turnover with the HCB Company showed a severe set-back. (See Exhibit P3 also). The normal turnover is 6,041 tons of rubber, but during the first plaintiff's absence, the amount of rubber transacted was only 3,895 tons — a difference of 2,146 tons. Since there were only three brokers instead of four, the volume of work reduced. Further, the first plaintiff is a chief broker and, as a result, the effect was great, particularly during that period when the rubber market was booming. PW3 attributes 30% to the first plaintiff's contribution towards the HCB Company's turnover with his company, and the corres-

ponding drop in the HCB Company's business is also 30%. 90% of the first plaintiff's work consists of guaranteed contracts and the commission is $2.80 per ton from each buyer and seller — making a total of $5.60 per ton. The remaining 10% are non-guaranteed contracts, and the total commissions from buyer and seller are $2.80 per ton. According to PW3, the first plaintiff's loss in share of commissions with his company during the six months period would be between $12,000 and $15,000 although earlier on he said it was between $25,000 to $50,000. These figures are his calculated guess. Be that as it may, I am satisfied that even from this one client alone the first plaintiff suffered a loss of between $12,000 and $15,000. The HCB Company paid the first plaintiff a total of $18,683.07 in commissions during the six-month period of absence. This would represent commissions that the first plaintiff would have earned from Bee Seng Company and similar clients. Taking other clients into consideration, the amount of commissions would be very much more than $18,000. By how much more, it is difficult to assess. It might be twice the amount or less. Although it is difficult to find a broker of first plaintiff's experience, there is no evidence that an attempt had been made to get another broker as a substitute to mitigate the loss. Taking everything into consideration, I would assess the loss at $6,000 for the six-month period. In short, the first plaintiff would in all probabilities have earned in brokerage commissions $6,000 more than the sum of $18,683.07 paid voluntarily by the HCB Company. In my view, the assessment is a very conservative one having regard to the commissions derived from just one client. This is not a case where there is insufficient evidence to support the first plaintiff's claim for damages. In my view, this case is not in the same category as *Bonham-Carter* v. *Hyde Park Hotel, Ltd.*,[7] a case referred to by the Federal Court in *Sum Kum* v. *Devaki Nair & Anor.*[8] The evidence of the first plaintiff (PW1), the director of the HCB Company (PW2) and a client of the HCB Company (PW3), are sufficient to prove damages as pleaded. PW3 is prepared to produce the records of his company to support his evidence as to transactions between his company and the HCB Company, but counsel for the defence has elected not to pursue the matter further. In the event, I consider the evidence of PW1, PW2 and PW3 as reliable as a basis for assessing damages in the absence of any evidence by the defence.

Accordingly, I enter judgment for the first plaintiff in the sum of $13,500 as general damages ($7,500 for pain and suffering and loss of amenities and $6,000 for loss of earnings on brokerage commissions), and in the sum of $24,742.32 as special damages on condition that out of the sum of $24,742.32, the sum of $24,331.82 is to be paid to the HCB Company. Defendants are also to pay interest at 6% per annum on general damages from date of service of writ (April 15, 1975) and at 3% per annum on $410.50 of the special damages from date of accident (July 11, 1972) to date of judgment and costs to be taxed.

Claim allowed.

Solicitors: *Murphy & Dunbar; Loke Kok Cheong.*

YASIN BIN WAHAB v. LOO KOK WAI

[O.C.J. (Mohamed Azmi J.) June 29, 1979]
[Kuala Lumpur — Civil Suit No. 1602 of 1976]

Damages — General damages — Quantum — Fracture of mandible and dental injuries — Deep laceration of forearm with keloid formation — Plaintiff awarded $19,000.

The plaintiff in this case was 26 years old and employed as a telegram messenger at the date of collision caused by the defendant's negligence. He claimed for damages for personal injuries sustained by him as a result of the said collision. The plaintiff suffered deep laceration of the left forearm with 3½ inches by ¼ inch with keloid formation; laceration on lower chin and ventral surface of the tongue; laceration of buccal mucosa (cheek region), slight ecchymosis of lower eyelids, fracture of the left mandible (lower jaw), fracture of the maxilla (upper jaw), fracture of alveolar bone and loss of five teeth. The fractured mandible had united soundly but the plaintiff still suffered discomfort on side to side movement of the mandible.

Held, allowing the plaintiff's claim:- general damages were awarded in the sum of $19,000 taking into account the overlapping factor. General damages were assessed in the following manner:- deep laceration of the left forearm with 3½ inches by ¼ inch with keloid formation ($1,500); fracture of the left mandible ($7,500); fracture of the maxilla ($7,000); fracture of alveolar bone ($4,500); loss of five teeth ($5,000).

Cases referred to:-

(1) *M. Alagappan s/o Muthuraman* v. *The Government of the Republic of Singapore & Anor.* [1967] 1 M.L.J. xl.

(2) *Tan Heng Lin & Anor.* v. *Tay Choon But* [1968] 1 M.L.J. xliii.

(3) *Dass* on Quantum in Accident Claims, p. 205.

(4) *Oh Chwee Neo* v. *Khoo Han Sway* [1970] 2 M.L.J. xx.

(5) *Jenny Yu & Anor.* v. *Pool & Anor.* [1967] 1 M.L.J. lxi.

(6) *Poh San Keng & Anor.* v. *Poh Bar Chian* [1968] 1 M.L.J. xxi.

(7) *Muslim bin Arip* v. *Gue Kee Peng* [1975] 1 M.L.J. xlv.

The following cases were also referred to in argument: *Paramasivam & Anor.* v. *Abdul Aziz & Ors.* [1976] 2 M.L.J. 91; *Sathiasaseelan* v. *V. Krishnasamy & Anor.* K.L. High Court Civil Suit No. 981/74 (unreported).

CIVIL SUIT.

R.K. Nathan for the plaintiff.

W. Abraham for the defendant.

Cur. Adv. Vult.

Mohamed Azmi J.: This is a claim for damages for personal injuries sustained by the plaintiff on August 11, 1975 when the motorcycle on which he was riding was knocked down by motorcar BY 3100 driven by the defendant at the junction of Jalan Pudu/ Jalan Shaw, Kuala Lumpur.

On liability, the defendant concedes that he is wholly to blame for the collision. The only issue for determination is on quantum of general damages for pain and suffering, and loss of amenities.

From the Statement of Agreed Facts, it is agreed by the parties that as a result of the said collision, the plaintiff suffered injuries as stated in the medical reports. There are four medical reports in the Agreed Bundle of Documents —

AB.1 — Medical Report of Dr. Ng Kam Sood, Orthopaedic Department, General Hospital, Kuala Lumpur, dated October 27, 1975.